

GRANT OF CONSERVATION EASEMENT

This grant of a Conservation Easement, made by the City of Parma, Ohio, located at 6611 Ridge Road, Parma, Ohio 44129 (hereinafter referred to as the "**Grantor**") to the West Creek Preservation Committee (WCPC), an Ohio nonprofit, whose mailing address is P.O. Box 347113, Parma, Ohio 44134 (hereinafter referred to as the "**Grantee**").

Recitals:

- A.** Grantor is the owner in fee simple of certain real property situated in the City of Parma, County of Cuyahoga, Ohio, which is legally described in Exhibit A, and depicted in Exhibit B, attached hereto and made a part hereof (hereinafter referred to as the "Protected Property") and having Permanent Parcel Number (PPN) 456-24-022.
- B.** The Protected Property has substantial value as a scenic, natural, aesthetic, and educational resource in its present state as a natural, scenic, wooded and riparian area, constituting a natural habitat for plants and wildlife.
- C.** Grantor and Grantee recognize the aforesaid scenic, natural, aesthetic, and educational values of the Protected Property in its present state, and have, by the conveyance and acceptance of a Conservation Easement, respectively, the common purpose of conserving the aforesaid values of the Protected Property, and preventing the use or development of the Protected Property for any purpose or in any manner that would conflict with the maintenance of the Protected Property in its natural, scenic, open and wooded condition, as suitable habitat for wild flora and fauna of all types.
- D.** The terms "ecological, scientific, educational, and aesthetic value," "natural, scenic and open condition" and "natural values" as used herein shall, without limiting the generality of the terms, mean a condition that is no less natural than the condition of the Protected Property at the time of this Grant, "natural" meaning that native plants and wildlife are permitted to carry out their life cycles without human interference.
- E.** Grantor intends to and does convey to the Grantee the right to preserve and protect the conservation values of the Protected Property in perpetuity and to prevent or remedy subsequent activities or uses that are inconsistent with the terms of this Conservation Easement; and by accepting this grant to honor the intentions of the Grantor stated herein and to preserve and protect in perpetuity the conservation values of the Protected Property according to the terms of this Conservation Easement.
- F.** The purpose of this Conservation Easement is to assure that the Protected Property will be retained and forever preserved in its natural, forested condition, as a habitat for plants and wildlife and as a buffer zone for the streams, if any, contained within it.
- G.** Grantor and Grantee intend that this Conservation Easement shall be a "conservation easement" as defined in Section 5301.67 of the Ohio Revised Code.
- H.** Grantee is willing to accept this Conservation Easement, subject to the reservations and to the terms and conditions and obligations set out herein and imposed hereby.

NOW, THEREFORE, for and in consideration of the premises and the foregoing recitations, and for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in consideration of the mutual promises, covenants, terms, conditions, and restrictions hereinafter set forth, the Grantor does hereby grant, give, and convey unto the Grantee, its successors and assigns, forever and in perpetuity, a Conservation Easement of the nature and character and to the extent hereinafter set forth, in, upon, and over the Protected Property, for the purposes of preserving, protecting, and maintaining the Protected Property as a scenic, natural, and wooded area, as habitat for plants, wildlife, and together with the right of access, and of visual access to and view of the Protected Property in its natural, scenic and open condition.

**THE TERMS, CONDITIONS, AND RESTRICTIONS OF THE
CONSERVATION EASEMENT ARE AS HEREINAFTER SET FORTH:**

I. Grantor's Rights and Responsibilities:

Grantor agrees as follows:

1. Except as otherwise herein provided, the Protected Property shall remain in its natural condition and be managed in a manner consistent with its preservation as a natural, scenic, open and wooded area. Each and every other activity or construction that might endanger the natural, scenic, open and wooded state of the Protected Property is forbidden. Without limiting the generality of the foregoing, it is Grantor's intent that this Conservation Easement is to prohibit commercial, industrial, or residential use of the Protected Property.
2. There shall be no activities or uses detrimental to water purity on the Property and no alteration or manipulation of the natural water courses, streams, gorges, marshes, wetlands, ponds or other water bodies by draining, filling, dredging, diking or otherwise except in accordance with generally accepted conservation procedures designed to enhance wetland and water course attributes and except as may be necessary to (i) prevent or halt soil erosion, soil slippage, and damage from erosion or (ii) maintain, repair or remove existing small dams and ponds.
3. No roads, buildings or other structures of any kind, camping accommodations, or mobile homes, shall be hereafter erected or placed on the Protected Property. No fences shall be hereafter erected on the Protected Property, except that any existing fences may be maintained, repaired, replaced or removed as needed, and except that fences may be installed along the property boundary or around special preserved or restricted areas for ecological and conservation purposes, provided that any fence or fence maintenance does not impede stream and water flow and further provided that such installation or maintenance shall be performed with minimal disturbance to vegetation within the easement. The area needed to install or repair such fences shall be the minimum necessary to accomplish the task as agreed upon in writing by the Grantor and Grantee. Upon completion, the area shall be restored to its previous state or as near as practical.
4. There shall be no dumping of soil, trash, ashes, garbage, waste, or other unsightly or offensive material, nor any placement of underground storage tanks, on or in the Protected Property, and no changing of its topography through the placing of soil or other substance or material such as land fill or dredging spoils. All trash or nonconforming material that is dumped

or placed on the Protected Property shall be removed from the Protected Property by the person or entity performing the dumping within thirty (30) days of first being found.

5. There shall be no fillings, excavations, dredging, mining, drilling, removal of soil, clay, sand, gravel, rock, minerals or other inorganic and natural organic materials or other changes in the general topography, of the on surface or subsurface of the Protected Property in any manner except as may be required in the course of any activity permitted herein and in accordance with generally accepted conservation procedures excepting what is necessary for the maintenance of foot trails, and that caused by the forces of nature. Without limiting the foregoing, there shall be no drilling for oil or gas or similar substances, nor shall the Protected Property be used as part of any drilling unit for oil and gas production.

6. No power lines, transmission lines, nor communications towers may be erected. No interests in the Protected Property shall be granted for such purposes. It is the intent of this provision to grant to the Grantee such an interest in the Protected Property as is sufficient to prohibit the exercise of the power of eminent domain by public utility companies and any other body or person. The Grantor reserves the right to maintain and repair existing telephone, electric, water, wells, or other utility lines or mains needed to provide for the needs of the Grantor, Grantor's successors or assigns. The area needed to repair such facilities shall be the minimum necessary to accomplish the task as agreed upon in writing by the Grantor and Grantee. Upon completion, the disturbed area shall be restored to its previous state or as near as practical.

7. There shall be no use or activity that causes or is likely to cause significant soil degradation or erosion or significant pollution of any surface or subsurface. Nor shall there be actions or uses detrimental or adverse to water conservation and purity, and fish, wildlife or habitat preservation on the Protected Property.

8. There shall be no removal or destruction of native growth, nor the cutting of trees, shrubs, or other vegetation on the Property. Nor shall there be any use of fertilizers, spraying with biocides, introduction of nonnative animals, grazing of domestic animals or disturbance or change in the natural habitat except in accordance with good husbandry practices and enhancement of wildlife habitats. Notwithstanding the foregoing, vegetation on the Property may be managed as may be necessary for:

- A. the control or prevention of imminent hazard, disease or fire and to restore natural habitat areas to promote native vegetation except for the blocking of streams; and;
- B. the removal and clearing of diseased, dying, damaged, destroyed or fallen trees, shrubs, or other vegetation which can be cut and left laying in place except for blocking streams provided however that diseased trees and vegetation which are cut may be removed from the site in order to prevent the spread of the disease;
- C. the elimination and removal of grapevines, poison ivy, invasive species and other toxic and undesirable growth which can be cut and left laying in place except for blocking streams;
- D. environmental study or evaluation and/or wildlife habitat enhancement; and
- E. the maintenance of any utilities or facilities that exist as of the date of the recording of this Conservation Easement.

9. There shall be no operation of automobiles, trucks, snowmobiles, dune buggies, motorcycles, all-terrain vehicles, or any recreational motorized vehicles on the Protected Property except for police cars, emergency vehicles, and equipment necessary to accomplish the maintenance activities allowed herein.

10. There shall be no hunting or trapping on the Protected Property, except to the extent specifically approved of in advance by Grantee as necessary to keep the animal population within the numbers consistent with the ecological balance of the area.

11. No signs or advertising of any kind or nature shall be located on the Protected Property except for:

- A. Signs stating the name and address of the Protected Property or marking the entrances, directions and boundaries on the Protected Property in favor of the Grantee. The Grantee shall have the right to post or clearly mark the boundaries of the Property in compliance with the Grantee's policies
- B. Grantee and Grantor shall have the right to post signage recognizing funding sources and grants that were used in the acquisition, enhancement, and/or protection of the Protected Property or easement as well as signs, memorials, monuments and other similar signs to promote the Property and educational or environmental activities thereon. The size and placement of such signage shall be mutually agreed upon by the Grantor and Grantee.
- C. Grantor may erect signs on the property to warn the visitors of hazards (if any), and to notify visitors of prohibited activities.

12. The Grantor expressly reserves for itself, its successors, and assigns, the right to use of the Protected Property for all purposes consistent with this Conservation Easement.

13. The Grantor reserves for itself, its personal representatives, heirs, successors, and assigns, the right to construct stream and wetland enhancement and/or restoration projects that prevent soil erosion, result in improved stream water quality, and enhance wildlife habitat. Such projects must be in compliance with the Management Plan and approved in advance by the Grantee.

14. Grantee shall adopt a management plan for the care and maintenance of the Property in accordance with the terms and conditions of this conservation easement (the "Management Plan"). The Management Plan, and any future updates to said Management Plan, will be subject to the review and approval of the Grantor, which approval will not be unreasonably withheld or delayed.

15. The Grantor reserves for itself, its successors, and assigns, the right to construct or maintain an all-purpose, non-motorized recreational trail that is also suitable for small emergency vehicles as well as to construct or maintain unpaved foot trails on the protected property. These are to be installed with minimal impact to the environment and stream. The trails will be in compliance with a management plan approved by the Grantee.

16. The Grantor reserves for itself, its personal representatives, heirs, successors and assigns, the right to construct and maintain interpretive displays and signage. These are to be

installed with minimal impact to the environment and streams and will be in compliance with a management plan approved by the Grantee.

17. The Protected Property shall not be platted or subdivided or otherwise divided, conveyed, or transferred in more than one single parcel.

II. Perpetual Restrictions.

The restrictions set forth in this Conservation Easement shall be perpetual and shall run with the land for the benefit of, and shall be enforceable by, Grantor and/or Grantee. This Conservation Easement and the covenants and restrictions set forth herein shall not be amended, released, extinguished or otherwise modified by Grantor and Grantee without the prior written consent of the other party, which consent may be withheld in their sole and absolute discretion.

III. Present Conveyance of Real Property Interest

This Conservation Easement constitutes a real property interest immediately vested in the Grantee.

IV. Future Conveyances by Grantor

The Grantor agrees that the terms, conditions, restrictions, and purposes of this Conservation Easement will be incorporated by reference in any subsequent deed, or other legal instrument, by which Grantor divests itself of either the fee simple title to, or of its possessory interest in, the Protected Property.

V. Amendments of This Grant

This Grant may be amended only with the written consent of Grantor and Grantee.

VI. Remediation

In the event a violation of these terms, conditions, or restrictions is found to exist, the Grantee, its respective successors or assigns, may, after notice to the Grantor, or the Grantor's successors or assigns, institute an action to enjoin by *ex parte*, temporary, and/or permanent injunction such violation, to require the restoration of the Protected Property to its prior conditions, and/or for damages for breach of covenant. Nothing herein shall be construed to entitle the Grantee to institute any enforcement proceedings against Grantor for any changes to the Protected Property due to causes beyond the Grantor's control, such as changes caused by natural fire, floods, storm, or unauthorized wrongful acts of third persons.

VII. Releases of Certain Substances

If, at any time, there occurs, or has occurred, a release in, on, or about the Protected Property of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, soil, flora or fauna in any way harmful or threatening to human health or the environment, Grantor agrees to take all steps necessary to assure its containment and remediation, including any cleanup that may be required.

VIII. Hold Harmless

Grantor hereby releases and agrees to hold harmless, indemnify, and defend the Grantee and its members, officers, employees, agents, and contractors and their respective heirs, personal representatives, successors and assigns (collectively "Indemnified Parties") from and against any and all liabilities, penalties, fines, charges, costs, losses, damages, expenses, causes of action, claims, demands, orders, judgments, or administrative actions, including, without limitation, attorney and other legal fees, arising from or in any way connected with: (unless caused by Grantee's negligence and/or recklessness):

- A. Injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Protected Property.
- B. The violation or alleged violation of, or other failure to comply with, any state, federal, or local law, regulation, or requirement, including, without limitation, CERCLA, by any person, in any way affecting, involving, or relating to the Protected Property.
- C. The presence or release in, on, from, or about the Protected Property, at any time, of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, soil, flora or fauna or in any way harmful or threatening to human health or the environment.
- D. The obligations, covenants, representations, and warranties of Grantor contained herein, unless caused by the action or inaction of the indemnified party or parties.

IX. Right of Inspection

The Grantee, or its duly authorized representative, may enter the Protected Property at any time on any day, Grantor agrees to allow access across its adjacent property if access from a public street to the Protected Property is for any reason unavailable.

X. Grantee's Rights and Remedies

In order to accomplish the purposes of this Conservation Easement, the following rights and remedies are conveyed to the Grantee so that Grantee may: (1) preserve and protect the conservation values of the Protected Property, (2) prevent any activity on or use of the Protected Property which is inconsistent with the purposes of this Conservation Easement, and (3) require the restoration of any areas of the Protected Property that may be damaged by any unauthorized activity or use.

A. Notice of Violation Corrective Action: If Grantee, determines that a violation of the terms of this Conservation Easement has occurred or is threatened, Grantee shall give written notice to the Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the conservation values of the Protected Property resulting from any use or activity inconsistent with the purpose of this Conservation Easement, to require Grantor to restore the portion of the Protected Property so injured to its prior condition in accordance with a plan approved in writing by the Grantee.

B. Injunctive Relief: If Grantor fails to cure the violation within thirty (30) days after receipt of notice thereof from the Grantee, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fails to begin curing such violation within the thirty (30) day period, or fail to continue diligently to cure such violation until finally cured, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Conservation Easement, to enjoin the violation, *ex parte* if necessary, by temporary or permanent injunction, and to require the restoration of the Protected Property in the condition that existed prior to any such injury.

C. Damages: Grantee shall be entitled to recover damages for violation of the terms of this Conservation Easement or injury to any conservation values protected by this Conservation Easement, including, without limitation, damages (as awarded by the Court) for the loss of any scenic, aesthetic, or environmental values. Without limiting Grantor's liability therefor, Grantee in the Grantee's sole discretion may apply any damages recovered to the cost of undertaking any corrective action on the Protected Property.

D. Emergency Enforcement: If Grantee, in Grantee's sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation values of the Protected Property, Grantee may pursue remedies under this section without prior notice to Grantor or without waiting for the period provided for cure to expire.

E. Scope of Relief: Grantor agrees that the remedies at law for Grantee for any violation of the terms of this Conservation Easement are inadequate and that the Grantee may be entitled to the injunctive relief described in this section, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Conservation Easement, without the necessity of proving either actual damages or the inadequacy or otherwise available legal remedies. The remedies of Grantee described in this section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

F. Cost of Enforcement: All costs incurred by the Grantee in enforcing the terms of this Conservation Easement against Grantor, including, without limitations, costs and expenses of suit and attorney's fees, and any costs of restoration necessitated by Grantor's violation of the terms of this Conservation Easement shall be borne by Grantor. Grantor shall pay no costs in the event the judgment is in Grantor's favor.

G. Forbearance: Forbearance by Grantee to exercise their respective rights under this Conservation Easement in the event of any breach of any of its terms shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same. No delay or omission by the Grantee in the exercise of any right or remedy shall be construed as a waiver.

H. Waiver of Certain Defenses: Grantor hereby waives any defenses of laches, estoppel, or prescription.

I. Force Majeure. It is specifically acknowledged that the remedies in this section will not apply to violations caused by third parties, war, Acts of God, force majeure or other causes beyond the Grantor's control.

J. Right to Post Signs: Grantee shall have the right to post one or more signs on the Protected Property which indicate that it is burdened by a conservation easement in favor of Grantee.

K. Grantee shall not be entitled to receive any funds from Grantor unless the damages sustained by Grantee were directly caused by Grantor's actions, negligence and/or recklessness. This clause shall control in the event this clause is construed to be inconsistent with any other section(s) of this document.

XI. Restriction on Transfer of the Property

Grantor shall not voluntarily or involuntarily sell, assign, transfer, lease, exchange, convey or otherwise encumber the Property without the prior written consent of Grantee, which consent may be withheld in its sole discretion; provided however, such consent will not be unreasonably withheld or delayed in the event the Property is transferred to a municipality, governmental entity, park district, or other private entity with a express purpose of owning and maintaining natural conservation areas or parks.

XII. Payment of Taxes and Special Assessments:

The Grantor or the Grantor's personal representatives, heirs, successors and assigns shall pay all taxes and special assessments validly assessed and levied against the Protected Property, including any such taxes validly levied and assessed against the Conservation Easement by competent authorities, and shall bear all costs of maintenance, insurance and any liabilities related to the Protected Property, and does hereby indemnify and hold the Grantee harmless therefrom.

XIII. Eminent Domain

If all or part of the Protected Property is taken in the exercise of eminent domain by public, corporate, or other authorities so as to abrogate the restriction imposed by this conservation easement, the Grantor and the Grantee shall join in appropriate actions to recover the full value of the Protected Property (or portion thereof) taken and all incidental or direct damages that result from such taking. Any expense incurred by the Grantor or the Grantee in any such action shall be first reimbursed out of the recovered proceeds. The remainder of such proceeds shall be divided between the Grantor and the Grantee in proportion to their interest in the Protected Property, such proportion to be established by using the relationship at the time of this Grant, of the fair market value of the Protected Property encumbered by this Conservation Easement as compared to the fair market value of the Protected Property as unencumbered by this Conservation Easement.

XIV. Transfer by Grantee

The Grantee shall have the right to transfer this perpetual Conservation Easement to any organization which is eligible to hold a Conservation Easement under the laws of the State of Ohio that agrees to the terms, conditions, restrictions, and purposes of this Conservation Easement. Grantee shall provide Grantor 30 days advance notice of such transfer.

XV. Recording and Deed Reference:

This Conservation Easement will be filed and recorded with the Cuyahoga County Recorders Office by the Grantee. The Grantor agrees that the terms, conditions, restrictions, and purposes of this Conservation Easement will either be referred to or inserted in any

subsequent deed, or other transfer instrument, by which the Grantor transfers title or possessor interest in the Protected Property. Furthermore, Grantor agrees that if a new plat plan is being done for the property, the Conservation Easement will be referred to on the registered plat plan.

XVI. Grantor's Continuing Obligation

Grantor's continuing obligations hereunder shall cease upon transfer of the Grantor's entire interest in the property, provided however, that Grantor shall remain personally liable to Grantee for any breach of the warranties, representation, covenants, and/or promises contained herein occurring or existing prior to the date of such transfer. The Grantor shall provide Grantee 30 days advance notice of any such transfer.

XVII. Miscellaneous:

A. Ohio Law to Govern. The laws of the State of Ohio shall govern this Conservation Easement agreement. If any provision herein is found to be invalid, the remainder of the provisions of this Conservation Easement shall not be affected thereby. This instrument sets forth the entire agreement of the parties and supersedes all prior discussions, negotiations, undertakings or agreements relating to the grant of this Conservation Easement.

B. Counterparts. The parties may execute this Conservation Easement Agreement in one or more counterparts which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument with respect to the party who signed it. In the event of any disparity between counterparts, the counterpart recorded by Grantee shall be controlling.

C. Nature of Easement. Without limiting any other provision of this Conservation Easement, Grantor and Grantee agree and intend that the Conservation Easement granted and accepted hereby constitute a "conservation easement" as that term is used in Section 5301.67 through 5301.70 of the Ohio Revised Code and that the Conservation Easement granted hereby shall be entitled to all the benefits of such sections.

D. Notices. Notices or other communication hereunder shall be in writing and shall be sent certified or registered mail, return receipt requested, or by other national overnight courier company, or personal delivery. Notice shall be deemed given upon receipt or refusal to accept delivery. Each party may change from time to time their respective address for notice hereunder by like notice to the other party.

The notice addresses of the parties are as follows:

Grantee: West Creek Preservation Committee
P.O. Box 347113
Parma, Ohio 44134
Attn: Director

Grantor: City of Parma, Ohio
6611 Ridge Road
Parma, OH 44129
Attn: Law Director

Notary Public
My Commission Expires

ACCEPTANCE

The undersigned does hereby consent to and accept the foregoing Conservation Easement and all the obligations imposed thereby.

IN WITNESS WHEREOF, the undersigned West Creek Preservation Committee, has executed and delivered this ACCEPTANCE this _____ day of _____, 2007.

GRANTEE: West Creek Preservation Committee

By: _____

By: _____

STATE OF OHIO)
) ss:
COUNTY OF CUYAHOGA)

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above-named West Creek Preservation Committee, by _____, the _____, and _____, the _____ of the West Creek Preservation Committee, who acknowledged that they did execute the foregoing instrument and that the same is the free act and deed of said West Creek Preservation Committee.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal this _____ day of _____, 2007.

Notary Public
My Commission Expires

EXHIBIT A

Situated in the City of Parma, County of Cuyahoga and State of Ohio and known as being Block "D" in K. & F. Builders, Inc. Northern Ohio Subdivision #1 of part of Original Parma Township Lots #38 and 40 Ely Tract, as shown by the recorded plat in Volume 218 of Maps, Page 41 of Cuyahoga County Records, and refilled in recorded plat Volume 219 of Maps, Page 34 of Cuyahoga County Records, be the same more or less, but subject to all legal highways.

Permanent Parcel No: 456-24-022

EXHIBIT B

MAP OF PROTECTED PROPERTY

